In defence of the English professions[1]

Ralf Dahrendorf KBE FBA
Director, London School of Economics and Political Science

When I came to England in 1952 as a postgraduate student, I knew little about the London School of Economics, and less about the subject which I had chosen for further study – sociology. Having just completed my German doctorate in philosophy, with Latin and Greek as subsidiary subjects, I was venturing onto new ground. Thus it was no small embarrassment when my supervisor, the late Professor T H Marshall (whom I came to like and admire greatly), asked me in my first week at LSE what subject I proposed for my thesis. I felt I had to give a definite answer to this man of few but carefully chosen words, and I said, 'intellectuals'. He liked the idea and proceeded to tell me of his Bloomsbury friends, all men and women of letters, but seeing my blank face he decided to recommend something more definite for me to read: the book by Roy Lewis and Angus Maude, 'Professional People', which had then just appeared and which I studied eagerly. Thus, one of my first intellectual encounters with this country had to do with the subject of tonight's lecture.

Let me confess right away that in the end I did not write my thesis on intellectuals. Indeed, I departed a long way from the original plan. My PhD thesis is entitled 'Unskilled Labour in British Industry'. But I hasten to add that this change of mind had little to do with Lewis and Maude, let alone T H Marshall. In fact, the book by Lewis and Maude is a rather impressive statement of a problem which continued to exercise many: 'To be a professional man or woman today is to live with uncertainty', they say in their very first sentence. They go on to talk about the fear of those who have inherited a 'tradition of self-examining integrity and self-forgetful service', that their future may be at risk, a great risk, in their view, for which they use big words: 'Indeed, it may be that the overriding problem of the professions is no less than that of western economies and modern societies themselves' (Lewis & Maude 1952, pp 1–2). My own claim in this lecture is somewhat less sweeping. But it is my contention that the condition of the British professions is an index of the state of liberty in this country, and that what they do, and what happens to them, has a great deal to do with whether Britain remains a model of a free society for the rest.

My distinguished predecessor as Director of the London School of Economics, Sir Alexander Carr-Saunders – Director at the time at which I came as a postgraduate – has spent much energy on defining the professions: 'For a profession may be defined as an occupation based upon specialized intellectual training, the purpose of which is to supply skilled advice and service to others in return for a definite fee or salary' (Carr-Saunders & Caradog Jones 1937). The definition has almost clinical precision, and undoubtedly is correct. However, it is one which does not help us in trying to distinguish the English professions from those of other countries, notably countries in Europe.

Here the list of qualities drawn up by W E Wickenden, a former president of the Institution of Electrical Engineers, and quoted by Roy Lewis and Angus Maude, takes us rather further. Wickenden characterizes professions, first, by a 'body of knowledge or of art', and this is true everywhere. He then mentions their concern with an 'educational process'; already differences are profound, for not everywhere are the professions as directly involved in the education of new members as, say, the Bar or the Law Society in Britain. Professions uphold a 'standard of professional qualifications' as well as a 'standard of

[1]Jephcott Lecture delivered to the Royal Society of Medicine, 31 October 1983

0141–0768/84/030178–08/$01.00/0

conduct'; the important question is the extent to which they do this themselves rather than invoking extraneous instances. They involve a 'recognition of status', which again is general, as is the 'organization of the professional group'. But then Wickenden makes his crucial statement: 'Professional status is therefore an implied contract to serve society over and beyond all specific duty to client and employer in consideration of the privileges and protection society extends to the profession' (Lewis & Maude 1952, p 55).

Perhaps one has to be a continental to see anything special in this statement; I am a continental, and therefore I do. What is special is the notion of an 'implied contract' between society and the professions which has no intermediary, no outside guarantor, and which nevertheless works. There are traces here of the 'social contract' John Locke-style (though not that of Thomas Hobbes), that is, of promises and privileges which are the result of free contract rather than being imposed by any agency[1]. Professions are private bodies with public functions; at least this is true for the English professions. They serve needs which extend far beyond the immediate relationship between the professional person and his or her client; but they serve them by rules and standards which are defined and upheld by the professions themselves. At the same time, their protection and their privileges are provided if not as a matter of course then through voluntary agreement.

All this is overstating things somewhat, but in essence it is the distinguishing characteristic of the English professions that the state does not enter into their contract with society. They are self-governing rather than governed by ministers and civil servants. They are a part of a society which does not require the state to govern all its affairs, but which recognizes the independence of those who provide a public service. In this sense their story is, by the same token, that of freedom in Britain.

As a European Commissioner I was, in my last eighteen months in Brussels, responsible for the mutual recognition of professional qualifications as a condition of mobility within the Community. When I inherited this portfolio, I found what can only be called a Cartesian mess. This of course is not supposed to exist. Cartesianism is about clarity and orderliness rather than about a shambles. Still, there was a senior official who had spent many years constructing, as it were, the professions from scratch in order to make them comparable, exactly like a pint of milk, or rather a litre of milk, and like pure beer, or rather tasteless Euro beer. He had decided to count the number of hours which medical students have to spend on preclinical subjects as well as clinical experience and to lay down a norm on the basis of the count. As a consequence, several countries, including Britain, would have had to change their medical education profoundly, which they were naturally reluctant to do. When I suggested that not much research, let alone officialdom, was needed to discover that on the whole doctors in Europe had comparable qualifications, and that in any case one could leave it to their professional organizations to decide who should be recognized, and who should not, this was at first regarded as unbearable Anglo-Saxon pragmatism.

It was, of course, though I hope it was not unbearable. Indeed, in the end, the Anglo-Saxon approach was adopted. But the point of the story is more serious: the notion of self-governing, independent professions is by no means general. To be sure, professional people in all free countries adhere to certain standards of professional skill and of conduct, and they have organizations designed to maintain these standards. But on the European continent the state is, in fact, the guarantor of the contract between the professions and society. Indeed, a German public lawyer, Heinrich Triepel, once insisted that the liberal professions should be called the 'professions bound by the state' (*staatlich gebundene Berufe*) (Deneke 1956). Government supervises professional education; future doctors and lawyers take 'state examinations' at the end of their degree courses. Admission to professional practice requires a government decision. There is often government involvement in disciplinary procedures. Directly or indirectly, the services which professional people have to render are defined by

[1]Locke's Second Treatise 'is really an attack upon Hobbes's *Leviathan*', says Russell Kirk in the introduction to the Gateway Edition of the Second Treatise (Chicago 1955): 'It is Locke's intention to prove that government is the product of free contract, that the governors of a people hold their authority only in trust . . .'

government, which also sets many fees or salaries. As a result, the 'privileges and protection society extends to the profession' are in fact not extended by society, but by the state.

This is not to say that continental societies are not free societies. Fortunately, those of Western Europe are free, and the involvement of government in the life of the professions does not seem to have hindered that. Or has it? In fact, there is a fundamental difference between countries in which government had to wrest powers from autonomous social units – be they local communities, institutions like universities, or organizations like the professions – and countries in which all rights of citizens had to be wrested from an all-powerful state. There was never a need to write 'Federalist Papers' for Continental Europe, as Hamilton, Jay and Madison did for the United States[1]: the power of central government was already there, and a case had to be made for its limitation rather than its extension. The burden of proof is very different in those countries in which there is a general presumption in favour of a self-governing society, as against those in which the presumption is always in favour of the state. Another way of putting this is to say that to countries of the former tradition, notably Britain and the United States, freedom comes naturally; whereas in the latter, including most of the European continent, it always has to be fought for. A self-governing society provides a firm mooring for that liberty which in state societies will forever remain precarious.

Like so many distinctions, however, this one too is more evident in theory than it is in practice. Indeed, when I came back to Britain in 1974, I soon discovered that the professions, and with them the whole notion of self-government, were under threat. Nor was this surprising. The winds of social change all over the developed world have blown for some time against traditions of independence, such as that of the professions. The prevailing changes of the last decades had above all one theme, equality, and they served to strengthen one mechanism, that of the state. Greater equality was to be brought about by public action. The professions were bound to be affected by such a trend.

Indeed, one way of describing the changes of the last decades is to say that society gave notice to the implied contract which demanded service from the professions, but afforded 'privileges and protection'. The very notions of privilege and protection came to be at risk. It was argued that the professions abused the protection of their monopoly to prevent useful competition, and to defend economic advantages. It was claimed that behind the screen of privilege the professions prevented the entry of recruits from underprivileged groups, that their self-government amounted among other things to self-recruitment. With the help of such claims and arguments, widespread resentment built up, or was mobilized, and the demand for state action to put right inequities became ever louder. It is not intended to be anecdotal if I use once again my own experience in these ten years by way of illustration.

This is of course, first of all, experience in the academic profession. One of the 'privileges and protections' of the academic profession is what is called tenure – that is, the appointment of university teachers to retiring age on contracts which cannot be broken by the employing institutions. The purpose of tenure is simple. University teaching and research is about the truth. No one knows the truth; we may, and do, err; but there are those whose job it is to search for the truth and impart their knowledge to others. The truth, even in this limited and relative sense, can hurt. The powers that be may not like it; indeed, they often do not like it. They will therefore tend to prevent it from being taught, even from being published. They will try to influence university teachers and those engaged in research. In order to protect them from such interference, and make sure that the pursuit of truth remains uninhibited, ultimate economic sanctions must be averted for university teachers.

The privilege, to be sure, cannot be unlimited. Here, as elsewhere, responsibility is the other side of protection. It was a mistake that many universities decided, after negotiations with trades unions, to grant tenure after but three years of probation and without any detailed review of the candidate's worthiness. Those universities which (like my own) have instead established a major review towards the end of a five-year appointment, and which

[1]It is not often realized that the 'Federalist Papers' by Alexander Hamilton, John Jay and James Madison in the late 1780s make the case *for* rather than against central government.

therefore make sure that the privilege is hard-earned, have a better case today in defending it against objections. This much was certainly right about the great social changes of the last decades: protection and privileges must be earned to be defensible; they must neither be inherited nor automatically granted.

At this time, neither universities nor government have appreciated this argument. Government, through the Privy Council, forces university institutions which apply for a Charter, or are changing their Charter, to include the stipulation that contracts of tenure can be broken for good economic or academic reasons. Universities, thanks to the inertia of their decision-making processes, continue to grant tenure more or less automatically after insufficient time and examination of the case. The combined errors may well serve to weaken one of the great English professions which is the envy of the world.

Let me give a second example. In 1976, I was appointed to the Royal Commission on the Legal Services. The remit of the Commission sounded innocuous enough. It was 'to inquire into the law and practice relating to the provision of legal services . . . and to consider whether any, and if so what changes are desirable in the public interest in the structure, organization, training, regulation of and entry to the legal profession, including the arrangements for determining its remuneration . . . and in the rules which prevent persons who are neither barristers nor solicitors from undertaking conveyancing and other legal business on behalf of other persons'. However, it does not take much reading between the lines to discover the real questions behind the setting-up of the Commission: Are lawyers a closed estate? Do they earn too much? Is their monopoly justifiable? Should the contract between society and the profession be reconsidered 'in the public interest'? Should there perhaps be a 'national legal service' instead of the two professions?

The Royal Commission (1979) found much that is in need of reform in the provision of legal services. Its more than forty pages of 'Conclusions and Recommendations' provide a catalogue of changes which affect almost every aspect of the work of the legal profession. Characteristically, however, many of these recommendations were not addressed to the Lord Chancellor, or to government in general, but to the Bar and the Law Society themselves. For the Royal Commission did not recommend any reduction in professional autonomy; it recommended the strengthening rather than the weakening of the profession.

Many examples serve to underline this majority view. One has to do with the important question of monopoly, and especially the vexing issue of conveyancing. What justification is there for solicitors having a near-monopoly in providing the necessary legal services in connection with buying and selling property? In theory, there is no particular reason why solicitors should have this monopoly. In practice, however, it is quite clear that those who buy and sell houses would wish to be protected from error and fraud. Whoever advises them, therefore, will have to be bound by pretty strict rules, by professional rules. This could undoubtedly be a separate and specialized conveyancing profession. But why create a new profession if there is one which has the skill and experience to do what needs to be done? Thus we saw good reasons for strengthening rules of conduct and making sure that the client is served properly, but no reasons for breaking the professional monopoly.

Another example has to do with training. How and why should the profession be involved in the training of its future members? Within the Royal Commission there was a strong tendency to say that it should not be. Training, it was said, was for public institutions to provide. Those who argued this way could refer to an earlier commission, chaired by a judge, which had in fact recommended the transfer of all legal training to universities and polytechnics. But, fortunately, when the Royal Commission began its deliberations, the public mood had begun to change. More and more people had begun to appreciate the advantages of a combination of academic and professional training. In this way, an excellent blend of academic questioning of fundamentals and professional understanding of practicalities can be achieved. Thus, the Royal Commission defended not only the professional colleges, but also the institutions of articles and pupillage.

These matters were controversial, as they should have been. In both cases singled out here there were minority reports. They are a reminder of the fact that defending the professions is

not enough. Any such defence has to look forward. The professions have to examine their own ways and improve their standards as well as the mechanisms for maintaining them, whenever possible. Retaining an old system of training does not mean that it can remain unchanged. Open recruitment is a task for the legal profession itself; the Bar as well as the Law Society should make many more scholarships available, and articles and pupillage should be better paid. Initial training is no longer enough. One of the responsibilities of the profession is to make sure that practising lawyers have opportunities for regular courses on the state of their art in order to remain up to date.

Indeed, the other side of 'privileges and protection' is always responsibility. Professional rules of conduct are neither simple nor painless. They are more than a codification of what people do in any case. Some of the new professions have discovered this as they went about their professionalization. One good example is the accountancy profession which was nudged to its strict professional standards in the early 1970s by Lord Benson. From 1981 to 1983, I had the honour of being the President of the Market Reseach Society which organizes members of an even more precarious new profession. The Society agreed, in 1983, a Code of Conduct which begins with an exemplary statement of principles: '(a) Members should behave in a professional manner. (b) The acceptance of market and social research depends upon the confidence of the business community and other users, and of the general public, in the integrity of practitioners. Members of the professional body undertake to refrain from any activity likely to impair such confidence and to comply with whatever general professional Code of Conduct, other regulations and interpretations may be laid down from time to time by the professional body. It is important to this end that members should consider at all times that the purpose of market and social research is the collection and analysis of information, and not the direct creation of sales nor the influencing of the opinion of informants. It is in this spirit that this Code of Conduct has been devised' (Market Research Society 1983). The Code is almost another definition of the English professions at their best: oriented to expertise rather than commercial interest, bound by self-imposed rules of behaviour, they base their status on an unwritten agreement with the general public of which the professional organization is the guardian.

But of course, here the problems begin. It is nice, even easy to spell out rules by which people should ideally abide; it is difficult and painful to make sure that they do so. Rules are but empty ideals without sanctions. Sanctions, however, conflict with the natural solidarity of those who share a professional interest. This is precisely where the liberal professions of the continent adopted the more traditional (Hobbesian) approach: in order to impose sanctions on those who violate the professional code, one needs a separate sanctioning instance, the state, or at any rate the possibility of its intervention. The English professions have taken the more difficult route. They demand from their members that they show both peer group solidarity and ruthlessness towards those of their peers who violate their code of conduct. The newer professions often find this difficult. Their codes are more impressive on principles than they are on sanctions. The older professions, too, occasionally get slack when it comes to sanctioning members. But if they do, they put the entire edifice of self-regulation in jeopardy. It is crucial for the independence of the professions that their organizations guard the rules of conduct jealously, and are seen to do so.

For the true foundation of the implied contract which makes the English professions a pillar of liberty, is confidence. The Market Research Society, in its Code of Conduct, is quite right to link the specific confidence of their clients with the wider one of the general public: if that undefined yet real force which we call the general public, or society, loses confidence in the professions, there is no doubt that the implied contract with society will give way to the explicit control of the state. Confidence is a precarious and imponderable quality. One can never be totally sure of it. There is always some doubt in the mysterious ways of the professions; thus it is not easy to tell whether this doubt amounts to a lack of confidence, or whether it is within the range that is to be expected in a world in which public opinion is very largely published opinion. There are also differences between the professions. Confidence in market and social research is probably still limited; confidence in solicitors

and the Law Society has come to be under a large cloud of doubt in recent years; confidence in the medical profession continues to be high. But these differences give no one cause for satisfaction: if confidence in any of the major professions is on the wane, all are at risk. This, if nothing else, should act as a stimulus for continuous self-examination and the strict enforcement of rules.

Confidence, however, is not just related to what happens within the professions, to the quality of their codes of conduct and the strictness with which they enforce their rules. It has to do, rather, with the more complicated question of what happens at the boundaries between the professions and society. How do the professions, and how do professional people behave when they come to leave the confines of professional practice? How do the professions present themselves to the general public in matters which are not strictly issues for professional skill? These boundary issues are important for the maintenance of confidence, but equally for that of professional integrity. Let me give three examples.

One of the most emotional issues of current public debate is that of the deployment of new nuclear weapons. Professional people have many a contribution to make to this debate. Physicists know as much about the effect of nuclear weapons as anybody. Students of politics may have thought about the conditions under which these weapons are used, or, much more important, under which their use can be prevented. Some lawyers have views about the justice or injustice of deploying and using nuclear weapons under international law. Doctors can tell a lot about the risks of nuclear pollution. All professional people have more or less strong opinions about the issue. But do they have these views as professional people? On the continent, advertisements appear regularly by 'doctors against pershings' and 'lawyers against cruise missiles'. In this country, I believe, only the Council for Academic Freedom and Democracy has expressed what might seem to be a professional view. However, in a sense, everybody who signs a public statement with his name and adds 'MD', or 'QC', or even 'Professor', involves the professions in the debate.

My own view is that this is wrong, and more, that it threatens the independence of professions if their members take a general political stand as members of a profession. It may well be that some professionals have specialized knowledge of nuclear matters; but so far as topical political decisions are concerned, this specialized knowledge is strictly irrelevant. The real political question is one of believing in peace by deterrence or in peace by disarmament (to simplify the issue somewhat), and this is not a question to which professionals have a privileged answer. Indeed, they abuse their privileges and protection if they pretend to have such an answer. Since they will be found out, sooner or later, they put the necessary privileges and protection of their profession in jeopardy.

Does this mean that professional people have to keep silent on all matters of public debate? It does not. For one thing, professional people are citizens like others; they vote, they are members of political parties, or not, they can speak up. But though the distinction between John Smith the citizen and John Smith MD may seem fine, and even artificial, it is, I believe, crucial. Many distinctions have been blurred in this respect, as in others in recent years; but I still regard it as improper if a member of my staff writes a letter to the editor on a general political matter, and gives his address as 'London School of Economics and Political Science'.

Then, of course, there are issues which are not in the same sense general political issues in which nuclear weapons are. There are moral issues which have a special relevance for members of a profession. Take abortion, or euthanasia in the case of apparently hopelessly ill old people. Here, too, there is a lively public debate. More than that, there are legal rules; that is to say, the community has decided to take the questions out of the hands of the medical profession. They are not part of the implied contract. Their moral relevance is such that answers are embodied in legal norms to which the sanctions of the law are attached. But morality changes, and not just in one direction. Moreover, professional people have something to say, for example, on death, and when it is inevitable. Is not this a legitimate area for professional activity, that is, for a profession crossing the boundary between itself and society?

Once again, it is important to be precise. In so far as we are talking about moral issues, a clear distinction is necessary between what the profession does and what an individual practitioner does. Moral issues are ultimately individual issues. One must probably accept that an individual doctor will not do what is prescribed because he has moral reservations about, say, abortion. (The question is much more difficult whether an individual doctor should be allowed to do what is proscribed because he regards it as morally right to violate the law; here the answer might well be no.) The profession as such, however, can do no more than point out facts on which there is agreement within it. It can say that the risk of error is this in some cases of possible euthanasia and that in others; it cannot advise on what is desirable. Once again, the final decisions will have to be taken by those who have overall social responsibility, that is, the makers of laws.

Is this not a rather restrictive, even arid view of the professions? Throughout this argument my central thesis has been the same: in this country there is an implied contract between the professions and society. This implied contract is the basis of professional autonomy, which in turn is one of the pillars of liberty. Anything that puts the implied contract in jeopardy, puts liberty in jeopardy. This is why extreme care is needed whenever professions, or professional people, approach the boundary between professions and society. This is also why the professions have to be chary of getting involved in political or moral debates.

However, there are limits to this reticence. What if professions find that, because of government action, they are no longer able to do their own job properly. Many of us have experienced such situations in recent years. Of course, those of us who have thought about it know that public expenditure cannot go on rising if economic conditions remain as they have been for the last decade. At the same time, there are very real cases for a professional outcry if cuts in university finance make an adequate university education, let alone research difficult; if there is insufficient legal aid to enable people of modest means to assert their rights; if, for financial reasons, necessary medical treatment cannot be provided. This last issue raises particularly difficult questions. It is relatively easy to answer as long as we talk about a necessary minimum of medical provision. But, today, medical technology has advanced so far that there is almost no limit to the funds that could be spent on the diagnosis and treatment of illness. Yet if these funds are not available, choices have to be made: choices between localities, between hospitals, in the end between individual patients. These are not moral choices; they are choices between degrees of immorality – an ugly predicament to which it is impossible to find a satisfactory answer, except to say that these are the kinds of issue on which one would expect to hear professional views, indeed the active participation of the profession in public debate.

Perhaps I am preaching to the converted. Indeed, given the state of the English professions, I rather think so. For, on the whole, the professions in this country seem to me to be healthy. There are many issues which I have not mentioned. I have but touched on recruitment and the suspicion of privileged access. I have given what many will regard as too easy an answer to the question of monopoly. I have skirted around the difficult problem of sanctions against those who break the professional code. I have lumped many different professions and even some semi-professions together, although there are important differences between them. I have not even mentioned the special concerns of what Lewis & Maude (1952, ch XI) called the 'socialized professions' in this country (see also Carr-Saunders & Wilson 1933), which of necessity are tied to the state, its bureaucracy, and its procedures. But when all is said and done, I would still claim that the English professions are a model of the potential of self-government, of an implied contract with society, and thus of liberty. The alternative – the professions bound by the state – is certainly fearful. By removing professional responsibility it creates the temptation to act irresponsibly. By substituting the state for society, it prevents the natural osmosis between the professions and the general public. By inviting the state to interfere in important services, it threatens the very foundations of liberty. One must hope, therefore, that the professions in England will manage to keep their own house in order, so that no doubt is cast on the legitimacy of their implied contract with society, and liberty prevails.

References

Carr-Saunders A M & Caradog Jones D (1937) A Survey of the Social Structure of England and Wales. Clarendon, Oxford; p 63

Carr-Saunders A & Wilson P A (1933) The Professions. Clarendon, Oxford

Deneke J F Volrad (1956) Die freien Berufe. Vorwerk, Stuttgart; p 316

Lewis R & Maude A (1952) Professional People. Phoenix House, London; pp 1, 2, 55, ch XI

Market Research Society (1983) Code of Conduct. Market Research Society, 15 Belgrave Square, London SW1

Royal Commission on the Legal Services (1979) Final Report. HMSO, London